

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



Permittee Information	
Permittee(s): Burr Pond Association & the Town of Sudbury Co-permittee: SOLitude Lake Management Permit Number: 2769-ANC-C	Control Activity: Pesticide (Herbicide – SePRO ProcellaCOR® EC) Waterbody: Burr Pond, Sudbury
a. Specific Conditions	
<p>Based upon the Findings contained in this permit, the Secretary of the Agency of Natural Resources (Secretary) has determined that the proposed aquatic nuisance control activity will comply with 10 V.S.A. § 1455 and is hereby approved under the following conditions and specifications.</p>	
<ol style="list-style-type: none"> 1. <u>Pesticide Use.</u> The use of SePRO ProcellaCOR® EC EPA Registration Number 67690-80 (treatment), formulation active ingredient 2.7% florpiauxifen-benzyl, is authorized to target Eurasian watermilfoil, <i>Myriophyllum spicatum</i>, in the waters of Burr Pond, Sudbury. Only SePRO ProcellaCOR® EC shall be used in the waterbody over the course of one calendar year. A treatment shall only occur on a Monday, Tuesday, Wednesday, or Thursday. This authorized pesticide shall be registered with the U.S. Environmental Protection Agency and the Vermont Agency of Agriculture, Food and Markets at the time of use and handled, applied, and disposed of in conformance with all state and federal regulations. 2. <u>Certified Applicator.</u> All applicators of the authorized pesticide shall be certified by the Vermont Agency of Agriculture, Food and Markets in Category Five – Aquatic Pest Control. 3. <u>Agency Notification.</u> Notification shall be provided at least 30 days in advance of the scheduled treatment date to the Secretary of the Agency of Natural Resources and to the Agency of Agriculture, Food & Markets to coordinate pesticide use inspection at the time of treatment. The permittee shall contact Erica Cummings of the Agency of Agriculture, Food & Markets at 802-917-2073 or erica.cummings@vermont.gov to coordinate. 4. <u>Annual Request & Approval of Treatment Locations.</u> A treatment shall only occur in locations that have been approved annually in writing by the Lakes and Ponds Management and Protection Program (Program). The permittee shall submit a request to the Program with proposed annual treatment locations. Requests may be submitted to the Program over the growing season as needed. A request shall include: <ol style="list-style-type: none"> A. A map identifying the acreage of the waterbody, acreage of the littoral zone of the waterbody, the proposed treatment location(s) with the associated acreage, and all other proposed locations and acreages for additional aquatic nuisance control activities (total treatment area) when applicable. B. A description of Eurasian watermilfoil and non-target aquatic plant species densities within each proposed treatment location. C. A map of the locations of wetlands as identified by the ANR Atlas or as defined by a dominance (>50% surface area coverage) of rooted woody, emergent, or floating leaved vegetation. Examples of vegetation include willow and alder shrubs, cattails, emergent bur-reed, emergent arrowhead/Sagittaria, and watershield/white water lily pads/spatterdock/floating leaved pondweeds. If determined necessary, a Wetlands Permit or Approval, per 10 V.S.A. § 914, shall be obtained prior to commencement or continuance of the control activity. D. The proposed treatment date(s). E. A map of proposed treatment concentration monitoring locations. 	

Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455



5. Annual Treatment Area. The total treatment area authorized by this permit and any additional authorizations shall not exceed 40% of the littoral zone of Burr Pond over the course of one calendar year, unless approved in writing by the Secretary. The same treatment location shall not be targeted with the same authorized pesticide for more than two consecutive years.
6. Treatment Plan. The treatment shall be carried out in accordance with the "PROCELLACOR™ EC HERBICIDE TREATMENT PLAN" as identified in the Approved Application. The treatment plan shall be updated as necessary to minimize potential adverse impacts on the resource and to ensure compliance with this permit. All updates to the treatment plan shall be submitted to the Secretary for approval.
7. Public Informational Notification. A public informational notification (notification) shall be posted and provided to the public at least 30 days in advance of the scheduled treatment date. The permittee shall maintain a webpage made available to the public for information on the authorized treatment. Posting of the physical and digital copies of the notification shall remain posted for no less than 30 days after the treatment occurred. If there are changes to the information on the notification, the notification shall be updated and reposted.
 - A. The notification shall include:
 - i. A map of the annually approved treatment location(s);
 - ii. The scheduled treatment date(s);
 - iii. The authorized pesticide to be used;
 - iv. The contact name(s), address(es), and telephone number(s) for all permittees;
 - v. The webpage made available to the public for information on the authorized treatment;
 - vi. A summary of the Water Use Advisories & Recommendations (specific condition a.9.);
 - vii. A statement identifying that the permittee shall supply potable water upon request to those who depend upon the treated waterbody or its outlet stream(s) (within one mile of the effluent) for domestic use to prepare food or drink on the day of treatment; and
 - viii. A statement informing all property owners that if their property is leased, rented, or used at any time during treatment and/or while the use advisories are in effect, the property owner is responsible for properly informing all transient users.
 - B. The notification shall be provided to the Secretary, the municipal offices of Hubbardton and Sudbury, all property owners (including commercial camps) that abut Burr Pond, and all property owners that abut the waters receiving effluent up to one mile downstream of Burr Pond's outlet by a method that provides proof of notification.
 - C. Physical copies of the notification shall be posted:
 - i. In locations visible to vehicle traffic, shoreline property owners, and potential lake users along all public roadways within 1,000 feet of the waterbody;
 - ii. On weather resistant material and at least 8½ inches by 11 inches in size; and
 - iii. At all public access points to the waterbody, including all public boat launches, public beaches, or other similar public locations providing access to the waterbody.
 - D. A digital copy of the notification shall be posted to the webpage required in condition a.7. made available to the public. In addition to the notification, this permit, the Approved Application, the [SePRO](#)

Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455



[ProcellaCOR® EC Specimen Label](#), the [SePRO ProcellaCOR® EC Safety Data Sheet](#), and the status of the Water Use Advisories & Recommendations (specific condition a.9.) shall be posted to this webpage.

8. Treatment Concentration Monitoring. The permittee shall collect water samples at each of the approved monitoring locations to determine the concentration of florpyrauxifen-benzyl after completion of each treatment. The results shall be submitted to the Secretary within 24 hours of the permittee receiving the results and be posted to the webpage as required under a.7. of this permit.
 - A. Water samples shall be chemically tested 48 hours after completion of each treatment. If samples indicate that florpyrauxifen-benzyl concentrations are greater than 2 parts per billion (ppb), monitoring shall continue after an additional 24-hour period. This monitoring process shall proceed until all monitoring locations are less than or equal to 2 ppb florpyrauxifen-benzyl or if this process is authorized to be discontinued by the Secretary.
 - B. The Secretary may require additional monitoring, including additional monitoring locations or the frequency of monitoring, if determined necessary.
 - C. Samples shall be analyzed using a methodology with a minimum detection limit of at least 1 ppb florpyrauxifen-benzyl.
9. Water Use Advisories & Recommendations. On the day of treatment, no use of the treated waterbody and associated outlet stream for up to one mile downstream is recommended for any purpose, including swimming, boating, fishing, irrigation, and all domestic uses. Additional advisories and recommendations related to irrigation and the use of treated waters that are listed under the following sections of the [ProcellaCOR® EC Specimen Label](#) shall be posted to the webpage as required under a.7. of this permit: Use Precautions, Use Restrictions, Application to Waters Used for Irrigation on Turf and Landscape Vegetation, Residential and other Non-Agricultural Irrigation, and TABLE 1: Non-agricultural irrigation following in-water application.
10. Potable Water. On the day of treatment, the permittee shall supply potable water upon request to those who depend upon the treated waterbody or its outlet stream for up to one mile downstream for domestic use to prepare food or drink.
11. Treatment Report. A treatment report shall be submitted to the Secretary within one week of each treatment and include the following:
 - A. Date, time, and duration of treatment;
 - B. Herbicide manufacturer, trade name, and formulation used;
 - C. Total amount of the herbicide applied;
 - D. Total surface area of the herbicide treatment;
 - E. Target herbicide concentration and related calculations;
 - F. Herbicide treatment technique and equipment used; and
 - G. Weather and lake conditions at time of herbicide treatment.
12. Aquatic Plant Surveys. For each treatment, a quantitative aquatic plant survey shall be conducted pre-treatment, post treatment during the same year, and the year following treatment. All aquatic plant surveys shall be completed using the point-intercept rake-toss methodology or an alternate method approved by the Secretary. All aquatic plant surveys shall include the date the survey was completed, a map depicting the survey points, and a description of all aquatic plant species present at each point and their relative

Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455



abundance. All survey data shall be reported in a similar format to prior years and include a digital submission of data collected at each point-intercept.

13. Annual Report. An annual report shall be submitted to the Secretary on the year of treatment and one year thereafter by December 31st and shall include:
 - A. A summary of the treatment concentration monitoring when applicable;
 - B. Aquatic plant surveys as required under a.12.;
 - C. A map of the treatment location(s) and all other locations where additional aquatic nuisance control activities occurred that year when applicable;
 - D. A map of the potential future treatment location(s) and all other proposed locations for additional aquatic nuisance control activities when applicable; and
 - E. A summary of the status of aquatic plant re-growth in treatment locations.

b. Standard Conditions

1. Access to Property. By acceptance of this permit, the Permittee agrees to allow representatives of the state of Vermont, at reasonable times and upon presentation of credentials, to enter upon the permittee's property, or to otherwise access the authorized project, to inspect to determine compliance with this permit.
2. Appeals. Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. The appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone: 802-951-1740.
3. Aquatic Species Spread Prevention. Prior to any control activity occurring, all equipment, including but not limited to boats, trailers, vehicle, and gear, that has been in or on any other waterbody, shall be decontaminated in accordance with the [Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities](#), Aquatic Nuisance Species Task Force, November 2013, or its replacement.
4. Compliance with Other Regulations. This permit does not relieve the permittee from obtaining all other approvals and permits prior to commencement of activity, or from the responsibility to comply with all other applicable federal, state, and local laws or regulations. In accordance with Fish and Wildlife Board Rule 641, adopted pursuant to 10 V.S.A. § 4145(a), a Special Use Permit from the Commissioner of Fish and Wildlife is required if a Vermont Department of Fish & Wildlife Access Area is used for the access of equipment or removal of aquatic plants associated with conducting an authorized control activity under this permit.
5. Duty to Comply and Enforcement. The permittee shall comply with all terms and conditions of this permit. Any permit noncompliance shall constitute a violation of 10 V.S.A. § 1455 and may be cause for any enforcement action and revocation, modification, or suspension of the permit. It shall not be a defense for

Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455



- the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.
6. Duty to Reapply. If the authorized activity is anticipated to continue after the expiration date of this permit, the Permittee shall reapply for coverage under a new permit at least 75 days prior to the expiration date of this permit.
 7. Implementation of the Control Activity. The approved control activity shall be carried out in accordance with the conditions of this permit and as shown in the Approved Application. No material or substantial changes shall be made to the project without the written approval of the Secretary.
 8. Legal Responsibilities for Damages. The Secretary, by issuing this individual permit, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whoever suffered arising out of the approved activity.
 9. Modification. This permit may be modified or amended upon request by the permittee or by the Secretary. If the Secretary determines that modification is appropriate, only the conditions subject to modification shall be reopened. Any modification under this condition shall be pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder.
 10. Notice of Addition or Termination of Permittee. The permittee(s) shall notify the Secretary of any addition or termination of a permittee on a form provided by the Secretary. If a contractor will be conducting the approved control activity, the permittee shall contact the Secretary and request co-permittee status for the contractor. A contractor shall not conduct control activities under this permit without first obtaining co-permittee status.
 11. Notice of Termination. The permittee may terminate the control activity as approved by this permit by submitting a notice of termination. The notice of termination shall include, at a minimum, the permit number for which termination is sought; the basis for the notice; the permittee's name and contact information; and a signed and dated certification statement by an authorized representative of the Permittee confirming the notice of termination.
 12. Rare, Threatened, or Endangered Species. Encounters with any rare, threatened, or endangered species shall be reported to the Secretary immediately. If determined necessary by the Secretary, an Endangered & Threatened Species Taking Permit, per 10 V.S.A. § 5408, shall be obtained prior to commencement or continuance of the control activity.
 13. Reopener. If after granting this permit the Secretary determines that there is evidence indicating that an authorized activity does not comply with the requirements of 10 V.S.A. Chapter 50, the Secretary may reopen and modify this permit to include different limitations and requirements.
 14. Reporting & Correspondence. All requisite correspondence directed to the Secretary pertaining to this permit, including notifications, surveys and reports, shall be submitted via email to ANR.WSMDShoreland@vermont.gov or mailed to the following address:

Lake & Shoreland Permitting
Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522
 15. Rights and Privileges. This permit does not authorize any damage to public or private property or invasion of private rights or the violation of federal, state, or local laws or regulations. In addition, this permit does not convey any title or interest to the lands lying under public waters or waters affected.

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



16. Twenty-Four Hour Non-compliance Reporting. Unless provided otherwise by this permit, the permittee shall report any noncompliance which may endanger public health or the environment. Any such information shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance, its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; as well as steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

c. Findings

1. Jurisdiction - 10 V.S.A. § 1455(a). Within waters of the State, no person may use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the secretary. The project, as described in Permit Application #2769-ANC-C, involves the use of a pesticide, SePRO ProcellaCOR® EC, to control Eurasian watermilfoil, *Myriophyllum spicatum*, within Burr Pond in Sudbury. Therefore, the Department has jurisdiction under 10 V.S.A. Chapter 50.

2. Application Receipt & Review. An Aquatic Nuisance Control Individual Permit application submitted by the Burr Pond Association & the Town of Sudbury (permittees) and SOLitude Lake Management (co-permittee) was received on December 5, 2018. It was reviewed in accordance with the Department of Environmental Conservation's Permit Application Review Guidance, adopted December 1, 2017.

The Secretary can issue an Aquatic Nuisance Control permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants pursuant to 10 V.S.A. § 1455 (d) if the following findings can be made:

- (1) there is no reasonable non-chemical alternative available;
- (2) there is acceptable risk to the non-target environment;
- (3) there is negligible risk to public health;
- (4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and
- (5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

The Secretary has determined that findings c.5.-c.9. can be made. Therefore, the Secretary shall issue a permit for the use of pesticides in waters of the State for the control of nuisance aquatic plants.

3. Background; Aquatic Nuisance Control Permit History. Burr Pond is an 85-acre waterbody with a maximum depth of 18 feet, with one outlet that flows southwest into the Hubbardton River. Eurasian watermilfoil was first confirmed in Burr Pond in 1991. Control methods for Eurasian watermilfoil in Burr Pond have included bottom barriers, diver assisted suction harvesting, biological controls (weevils: *Euhrychiopsis lecontei*), and herbicides. The following is a summary of Aquatic Nuisance Control permits for control activities in Burr Pond since the discovery of Eurasian watermilfoil (permits with no identified expiration date have expired). Permits and records containing additional detail on these projects may be made available upon request.

Bottom barriers: 1992-B02, 1994-B03, 1994-B05, 1995-B01, 1997-B01, 2000-B01, 2005-B04, 2350-ANC (expires 7/12/2027)

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



Herbicides: 1994-C01, 1998-C01, 1998-C03, 2001-C05, 2002-C04, 2005-C02, 2008-C01, 2010-C04

Powered Mechanical Devices: 1994-H02, 2008-H01

Biological: 2013-W01

4. Project Purpose. The purpose of the project is to integrate the use of ProcellaCOR® EC with a plan to manage an established population of Eurasian watermilfoil to improve the public good uses of Burr Pond.
5. No Reasonable Non-Chemical Alternative Available – 10 V.S.A. 1455(d)(1). The Secretary identified a potentially reasonable approach for addressing a lake-wide population of Eurasian watermilfoil. Baseline assumptions regarding the proposed project were made to outline a reasonable approach for controlling Eurasian watermilfoil as well as identifying ecological and water quality characteristics for this waterbody:
 - The control activity proposes to target specific locations (spot treatments) of dense populations of the aquatic invasive species Eurasian watermilfoil.
 - Eurasian watermilfoil has been established in Burr Pond since at least 1991.
 - The Eurasian watermilfoil population has spread throughout the lake, is a well-established population, and eradication is a highly unlikely outcome from control efforts.
 - A sustained lake-wide management approach using non-chemical and chemical control methods targeting Eurasian watermilfoil has and will continue to occur in Burr Pond.
 - Burr Pond is 85 acres and the littoral zone covers approximately 67 acres, which is 78.8% of the total lake surface area. The littoral zone is the area of the lake that supports rooted aquatic vegetation. A bathymetry and aquatic plant location/density survey was conducted by the Secretary on 8/10/2018. The littoral zone was determined to extend up to approximately 16 feet deep based on the results of that survey. Open water conditions comprise 18 acres, 21.8% of the total lake surface area.
 - Approximately 26.4 acres are proposed to be treated with ProcellaCOR® EC in 2019, which is 31.1% of the total lake surface area and 39.4% of the littoral zone of Burr Pond. Up to 0.2 acres are approved to be controlled by bottom barriers (permit #2350-ANC) annually, which is 0.2% of the total lake surface area and 0.3% of the littoral zone of Burr Pond.
 - ProcellaCOR® EC (active ingredient florpyrauxifen-benzyl) is expected to dissipate rapidly to a reduced concentration in Burr Pond due to its rapid photolysis and aerobic aquatic metabolism. The outlet of Burr Pond flows into the Hubbardton River. Due to its rapid degradation, it is anticipated that reduced concentrations will flow downstream until complete breakdown of the pesticide occurs.
 - As identified in the Vermont Lake Score Card (BURR (SUDBRY) – data through 2018), Burr Pond’s trend score is good, it meets Vermont’s water quality standards, and it has a moderately disturbed watershed score. Mean spring total phosphorus is 12 ug/L and mean summer Secchi depth is 4.2 meters. This data supports the likelihood of the presence of elevated biological productivity within Burr Pond, which may result in dense aquatic plant populations, including Eurasian watermilfoil.
 - Burr Pond has no data related to the Vermont Inland Lake Shoreland and Habitat Score/USEPA National Lake Assessment Score, as identified in the Vermont Lake Score Card. If this assessment is completed, this ranking would measure the human activity within 15 meters of the lake’s shoreline at ten random sites around the lake; it would reflect how intensively and extensively a lake’s shoreland is developed.

The use of a pesticide for targeted spot treatments is a reasonable approach to manage Eurasian watermilfoil. This management approach can target limited locations within the littoral zone where public good uses, such as boating, fishing, or swimming, are impacted by this species. This targeted spot treatment

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



approach can be limited to specific areas to minimize potential adverse impacts on native aquatic plant species that may be sensitive to the pesticide. The Secretary will assess the proposed treatment locations targeted by a spot treatment to ensure the use of pesticide will be focused to areas of dense Eurasian watermilfoil growth only where non-chemical control methods may be unreasonable due to the size or density of the Eurasian watermilfoil population or the potential non-target impacts associated with conducting a non-chemical control project.

The Secretary has determined there is no reasonable non-chemical alternative available.

6. Acceptable Risk to the Non-Target Environment – 10 V.S.A. 1455(d)(2). The Secretary considers the following as the non-target environment:

- Aquatic plants and animals within the waterbody proposed for treatment and waters downstream of the waterbody.
- Wetlands within the waterbody proposed for treatment and wetlands downstream of the waterbody.
- Human use of waters treated with the pesticide. This includes, hydroponic farming, greenhouse and nursery plants, and all locations irrigated with waters treated with ProcellaCOR® EC.
- The ecological integrity of the waterbody, which is the culmination of how the biological, chemical, and physical integrity of the waterbody interact. The concept of ecological integrity is identified in the [Vermont Department of Environmental Conservation Watershed Management Division's Statewide Surface Water Management Strategy](#).

For determining what might be considered an acceptable risk to the non-target environment from a proposed treatment, the Secretary made several baseline assumptions related to the non-target environments potentially affected by the proposed treatment:

- A control project for Eurasian watermilfoil will have an impact on the ecological integrity of the waterbody as the non-target environment cannot be avoided completely.
- Rare aquatic plant species have been recorded as being present in Burr Pond. Species observed include prickly hornwort (S2S3), *Ceratophyllum echinatum*, last observed 8/1/2004; whorled-watermilfoil (S2S3), Fries' pondweed (S3), *Potamogeton friesii*, last observed 8/31/1998; straight-leaf pondweed (S2S3), *Potamogeton strictifolius*; last observed 6/24/1993; white water-crowfoot (S3), *Ranunculus aquatilis*, last observed 10/21/2013; fruited bladderwort (S3), *Utricularia geminiscapa*, last observed 8/1/2001; humped bladderwort (S3), *Utricularia gibba*, last observed 10/21/2016; and lesser bladderwort (S3), *Utricularia minor*, last observed 10/21/2016. Those species are not listed as being controlled by ProcellaCOR® EC as identified on the product label. However, *Ceratophyllum echinatum* is closely related to species that are controlled by ProcellaCOR® EC.
- Native aquatic plants controlled by ProcellaCOR® EC as identified on the product label have been recorded as being present in Burr Pond. This includes coontail, *Ceratophyllum demersum*, last observed at scattered to moderately dense populations in 2016 within and adjacent to the Class II wetland to the east of the Department of Fish & Wildlife's public access area; and watershield, *Brasenia schreberi*, identified as being present in the same wetland in 2016. The product label identifies *Ceratophyllum demersum* as being less sensitive to ProcellaCOR® EC and that a higher application rate may be required to control it. The applicant indicates that white water lily, *Nymphaea odorata*, and yellow water lily, *Nuphar variegata*, may also be sensitive (not controlled/sublethal) to ProcellaCOR® EC based on treatments conducted in New Hampshire in 2018. Scattered to dense populations of *Nymphaea odorata* were found around the entire shoreline and wetland in 2016. A scattered density population of *Nuphar variegata* was identified along the eastern

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



shoreline of Burr Pond in 2016. While not identified as being controlled on the ProcellaCOR® EC product label, northern watermilfoil, *Myriophyllum sibiricum*, is closely related to species that are controlled by ProcellaCOR® EC and it is likely that the species would be sensitive to a treatment. *Myriophyllum sibiricum* was identified as being present within the Class II wetland to the east of the Department of Fish & Wildlife's public access area.

- The outlet of Burr Pond flows into the Hubbardton River. The species composition within Hubbardton River is unknown.
- Mapped Class II wetlands are located within Burr Pond and downstream the Hubbardton River adjacent to the outlet. The application includes an aquatic plant survey that surveys the Burr Pond wetland separately from the main waterbody. The Burr Pond wetland is considered the Class II wetland immediately to the east of the Vermont Department of Fish & Wildlife's public access area.
- Burr Pond and its waters are public, and it is reasonable to assume that all public waters may be used for irrigation.
- As identified in the ProcellaCOR® EC Safety Data Sheet, the product is practically non-toxic to fish on an acute basis and the material is slightly toxic to aquatic invertebrates on an acute basis.

It is not anticipated that the non-target aquatic plants and animals within Burr Pond, the waters downstream of Burr Pond, or the wetlands will be adversely impacted by applying ProcellaCOR® EC in accordance with this permit and the Approved Application. The current treatment application rate is proposed to be 2 PDUs (maximum application rate is 25 PDUs), which is within the application rate for targeting Eurasian watermilfoil. For aquatic plant species that are known to be controlled by ProcellaCOR® EC, aquatic plant species closely related to species controlled by ProcellaCOR® EC, or for species that may be sensitive to ProcellaCOR® EC, proposed treatments will need to be designed appropriately to avoid potential impacts to known locations of those populations. The majority of the native non-target species populations that may be negatively impacted by a ProcellaCOR® EC treatment are located within or immediately adjacent to the Burr Pond wetland. Due to this potential negative impact, ProcellaCOR® EC treatments should avoid these sensitive populations that are immediately adjacent to and within the Burr Pond wetland. Annual aquatic plant surveys will be conducted after a treatment occurs in order to assess potential impacts to the native non-target environment. The Secretary will assess those species populations when reviewing the permittee's annual request for treatment locations.

While there are recommended use restrictions identified on the product label for hydroponic farming, greenhouse, nursery plants, and irrigation of landscape vegetation, use restrictions are limited and will likely be temporary as ProcellaCOR® EC is expected to dissipate rapidly to a reduced concentration in Burr Pond due to its rapid photolysis and aerobic aquatic metabolism.

The presence of aquatic vegetation is required for fish and wildlife habitat. Generally, Eurasian watermilfoil has been identified as providing poor fish and wildlife habitat compared with native aquatic vegetation. However, Eurasian watermilfoil may provide beneficial structural habitat in the absence of other aquatic vegetation. As a measure to reduce potential non-target impacts on the ecological integrity of Burr Pond, no more than 40% of the littoral zone may be targeted by aquatic plant management activities annually. For any requests that propose managing more than 40% of the littoral zone, including a combination of chemical and non-chemical control methods, the permittee must demonstrate a need where the potential adverse effects on the non-target environment are outweighed by the tangible benefits.

The permittee is required to submit an annual request for proposed treatment locations and may not conduct the treatment until receiving approval from the Secretary. To ensure compliance with this permit and to assess any unforeseen or unanticipated adverse impacts on the non-target environment, the findings

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



made in this permit to authorize the use of ProcellaCOR® EC may be reviewed annually upon receiving the annual request.

The use of ProcellaCOR® EC is scheduled to occur while Eurasian watermilfoil is actively growing. ProcellaCOR® EC is absorbed through submersed plant shoots and leaves when used in water. There is the potential that treatments scheduled earlier in the year may be more protective of non-target native aquatic plants as Eurasian watermilfoil often begins actively growing before non-target native aquatic plants. Targeting Eurasian watermilfoil with ProcellaCOR® EC earlier in the season may also result in a reduction of the amount of the pesticide required to control Eurasian watermilfoil. Reducing Eurasian watermilfoil biomass earlier in the year before non-target native aquatic plants begin fully growing may allow for an increase in available light for non-target native aquatic plants later in the growing season. This may temporarily increase the competitive advantage for those non-target native aquatic plants to exist for a longer period within the treatment location before Eurasian watermilfoil recolonizes the area, thus potentially reducing the frequency of using a pesticide.

The Secretary has determined that there is an acceptable risk to the non-target environment.

7. Public Health – 10 V.S.A. 1455(d)(3). At the request of the Secretary, the Vermont Department of Health (VDH), Radiological and Toxicological Sciences Division reviewed the risk of the proposed activity to public health, in which it examined potential concerns for public health that may be associated with exposure to ProcellaCOR® EC. Based on VDH’s review of the confidential statement of formulation, it is reasonable to conclude that human exposure to the inert compounds contained in ProcellaCOR® EC (at the proposed concentrations that would result under the conditions proposed by the applicants) is not likely to result in an increase in the level of concern for public health.

To minimize unnecessary pesticide exposure to the public over a weekend, treatments will only occur on a Monday, Tuesday, Wednesday, or Thursday. On the day of treatment, no use of the treated waterbody and associated outlet stream for up to one mile downstream is recommended for any purpose, including swimming, boating, fishing, irrigation, and all domestic uses. The permittee will supply potable water upon request to those who depend upon the treated waterbody or its outlet stream for up to one mile downstream for domestic use to prepare food or drink on the day of treatment.

The Secretary has determined that there is negligible risk to public health.

8. Long-range Management Plan – 10 V.S.A. 1455(d)(4). Aquatic invasive species are considered stressors on Vermont’s surface waters. However, Eurasian watermilfoil has spread throughout Burr Pond, is well-established, and eradication is a highly unlikely outcome from control efforts. Eurasian watermilfoil is and will continue to be a part of the aquatic environment of Burr Pond for the foreseeable future. As a result, a targeted use of chemical and non-chemical control methods as a part of an integrated pest management plan to control nuisance levels of Eurasian watermilfoil that are impacting public good uses has been developed.

The permittee will update the “PROCELLACOR™ EC HERBICIDE TREATMENT PLAN” in the Approved Application as needed to ensure the plan is implemented to achieve the project purpose, promote the public good, be protective of the resource, and include pesticide minimization measures. Review of and updates to the plan need to be assessed in conjunction with the baseline biological, chemical, and physical characteristics of the waterbody and watershed to set expectations for what the control project may achieve. Potential updates to the plan will incorporate the following review:

Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455



- Identify the aquatic nuisance problem, the area(s) with the aquatic nuisance problem, and characterize the extent of the problem, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, native vegetation, and recreation).
- Identify locations of species that may be sensitive to a control project.
- Identify locations where wetlands may be present.
- Identify an action threshold to determine when a control project may be appropriate.
- Identify possible factors causing or contributing to the aquatic nuisance problem.
- Review the past management history of the aquatic nuisance.
- Develop an integrated pest management plan that incorporates short and long-term goals, anticipated levels of control, expectations achieved by a control project, and whether a control project will need to occur in perpetuity to maintain anticipated levels of control.
- Develop management alternatives, such as no action, prevention, mechanical or physical methods, cultural methods, biological control agents, or the targeted use of pesticides, to identify how different control projects may reach the goals of the integrated pest management plan. Management alternatives should be compatible with other water uses, not adversely affect natural lake functions, have a known and understood mechanism of control, be documented as low risk to natural ecosystem functions, and are predictable and repeatable in efficacy and outcome.
- Develop methods for evaluating the efficiency of the integrated pest management plan to act as a feedback loop for determining how future control efforts should proceed.
- Implement watershed and shoreline management strategies to address sources of phosphorus and to promote the long-term stability and resilience of the waterbody to help reduce the likelihood of nuisance populations from developing.

The Secretary has determined that a long-range management plan has been developed that incorporates a schedule of pesticide minimization by utilizing an integrated pest management plan.

9. Public Benefit – 10 V.S.A. 1455(d)(5). The Secretary considered the following criteria in determining whether there is a public benefit to be achieved from the application of the pesticide:

- Whether carrying out the project produces tangible benefits to public good uses, such as boating, fishing, and swimming, that outweigh potential impacts on the water resource.
 - Assessment: Tangible benefits to be achieved in the target waterbody are likely to be associated with the temporary decrease in the frequency of occurrence and biomass of Eurasian watermilfoil. This temporary decrease is anticipated to result in a tangible benefit for boating and swimming within the treatment locations. Regarding fishing as a public good use in relation to the proposed project, it remains undetermined as to whether the project will produce a tangible long or short-term benefit. The presence of aquatic vegetation is required for fish and wildlife habitat. Generally, Eurasian watermilfoil has been identified as providing poor fish and wildlife habitat compared with native aquatic vegetation. However, Eurasian watermilfoil may provide beneficial structural habitat in the absence of other aquatic vegetation. To reduce the potential impact to fishing as a result of impacts to fish and wildlife habitat from aquatic plant management, no more than 40% of the littoral zone may be targeted by aquatic plant management activities.

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



- Whether the potential cumulative impacts from carrying out the control project adversely affect the water resource and the public that utilizes that resource.
 - Assessment: Additional cumulative impacts were considered that relate to the water resource and how the public may utilize that resource. The Secretary has determined that the cumulative impacts from carrying out the control project are not anticipated to affect the water resource and the public that utilizes that resource.
 - On the day of treatment, no use of the treated waterbody and associated outlet stream for up to one mile downstream is recommended for any purpose, including swimming, boating, fishing, irrigation, and all domestic uses. Potable water will be supplied by the permittee upon request to those who depend upon the treated waterbody or its outlet stream for up to one mile downstream for domestic use to prepare food or drink. Additional advisories and recommendations related to irrigation and the use of treated waters are listed under the following sections of the [ProcellaCOR® EC Specimen Label](#): Use Precautions, Use Restrictions, Application to Waters Used for Irrigation on Turf and Landscape Vegetation, Residential and other Non-Agricultural Irrigation, and TABLE 1: Non-agricultural irrigation following in-water application. Treatment concentration monitoring will occur to assess concentrations of ProcellaCOR® EC (active ingredient florasulfuron-benzyl) within Burr Pond and waters downstream to inform the public when the herbicide is no longer detectable and when potential irrigation restrictions no longer apply. Impacts on the public that utilize the water resource are anticipated to be temporary and minor.
 - Burr Pond is currently a waterbody that is dominated by aquatic plants within the littoral zone as opposed to being dominated by algal species. Aquatic plants utilize the available nutrients in this waterbody, thereby limiting the available nutrients for algal species. To maintain this current steady state and to prevent algal species from becoming dominant and potentially impacting the water resource and the public that utilizes that resource, no more than 40% of the littoral zone may be targeted by aquatic plant management activities.
 - Treating dense populations of Eurasian watermilfoil with ProcellaCOR® EC (a spot treatment herbicide with relatively short exposure times) will rapidly increase the biological oxygen demand as the Eurasian watermilfoil decomposes, which may deplete concentrations of dissolved oxygen and result in anoxia. Anoxia has the potential to result in a die-off of aquatic animals. To reduce the potential for anoxia to occur, treatment locations within the littoral zone will be limited so that no more than 40% of the littoral zone is targeted annually for aquatic plant management activities.
 - Burr Pond is not located within a Groundwater Source Protection Area or a Surface Water Source Protection Area.
 - Assessment: The project proposed to control Eurasian watermilfoil only, which is an aquatic invasive species. The target concentration of ProcellaCOR® EC used will be in accordance with the Prescription Dose Units (PDU) per acre-foot of water as identified on the label. The treatment is proposed to be a spot treatment design with relatively short exposure times (hours to several days). Treatments will occur during a time of year with actively growing Eurasian watermilfoil. To prevent resistance to ProcellaCOR® EC, the same treatment area will
- Whether measures to reduce impacts on the water resource have been taken.
 - Assessment: The project proposed to control Eurasian watermilfoil only, which is an aquatic invasive species. The target concentration of ProcellaCOR® EC used will be in accordance with the Prescription Dose Units (PDU) per acre-foot of water as identified on the label. The treatment is proposed to be a spot treatment design with relatively short exposure times (hours to several days). Treatments will occur during a time of year with actively growing Eurasian watermilfoil. To prevent resistance to ProcellaCOR® EC, the same treatment area will

**Aquatic Nuisance Control Individual Permit
Under 10 V.S.A. § 1455**



not be targeted for more than two consecutive years with ProcellaCOR® EC. The permittee is required to submit an annual request for proposed treatment locations and may not conduct the treatment until receiving approval from the Secretary. To ensure compliance with this permit and to assess any unforeseen or unanticipated adverse impacts on the resource or public good that may have resulted from a treatment, the findings made in this permit to authorize the use of ProcellaCOR® EC may be reviewed annually upon receiving the annual request.

- Whether the project is excessive for the stated purpose.
 - Assessment: Using ProcellaCOR® EC, a spot treatment herbicide with relatively short exposure times, as a part of an ongoing integrated management plan to manage an established population of Eurasian watermilfoil to improve the public good uses of Burr Pond is not considered excessive for the stated purpose.

Based upon review of the public good criteria, the Secretary has determined that the tangible benefits to the public good outweigh the potential impacts. The Secretary finds that there is a public benefit to be achieved from the application of a pesticide.

10. 10 V.S.A. § 1455(h) – Public Notification. Upon receipt of the application, the Secretary proceeded in accordance with the permit process as identified under 10 V.S.A. Chapter 170 and the rules adopted thereunder.

11. References:

[SePRO ProcellaCOR® EC Specimen Label](#)

[SePRO ProcellaCOR® EC Safety Data Sheet](#)

d. Authorization

By delegation from the Secretary, the Vermont Department of Environmental Conservation has made a determination that the above activity qualifies for an individual aquatic nuisance control permit. The Permittees are authorized per 10 V.S.A. § 1455(i) subject to the conditions herein specified.

This permit shall be effective on the day of signing and expire five years thereafter.

Emily Boedecker, Commissioner
Department of Environmental Conservation

By: _____

Angela Shambaugh, Acting Program Manager
Lakes & Ponds Management and Protection Program
Watershed Management Division